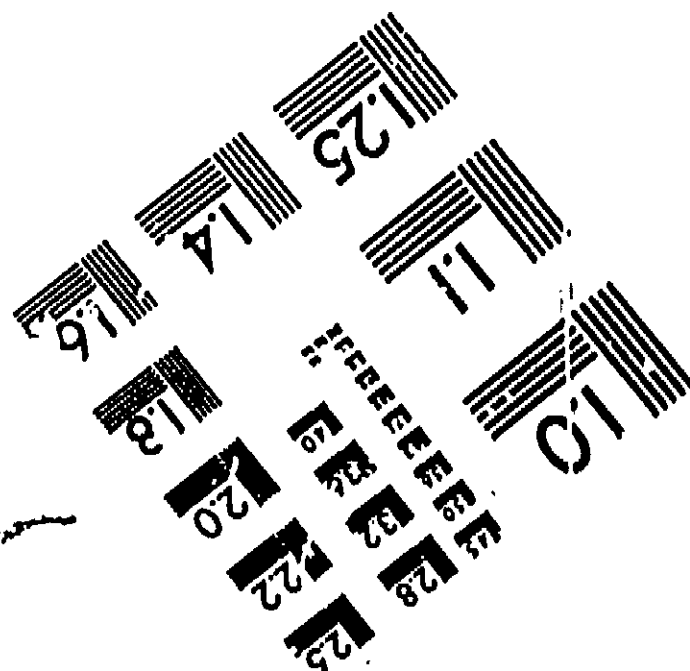
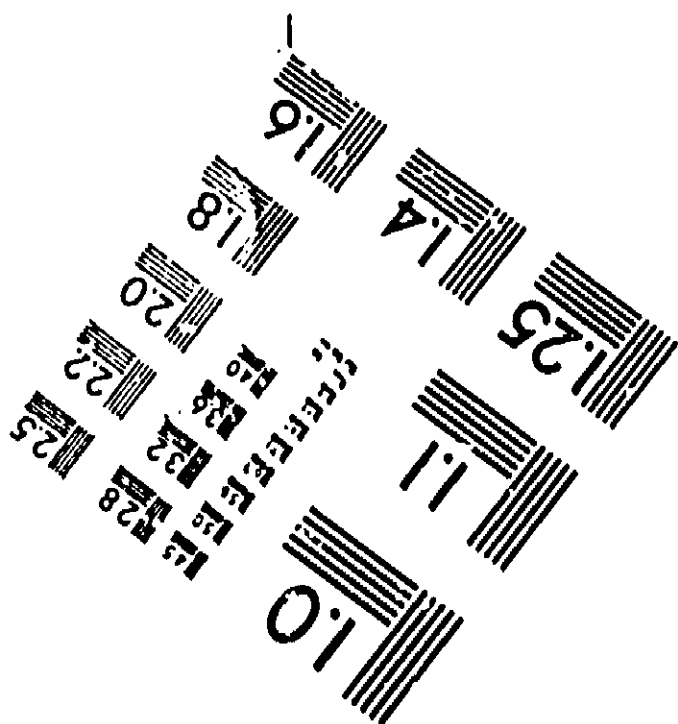
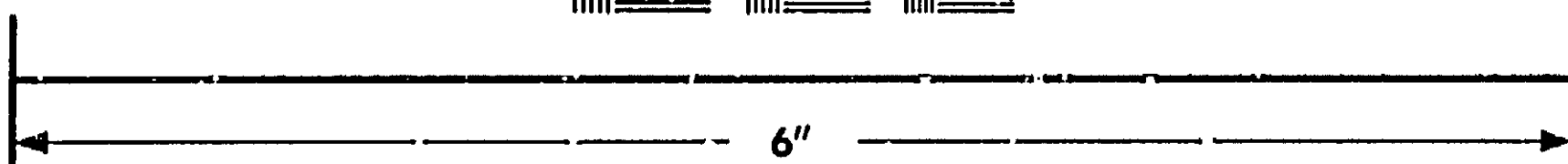
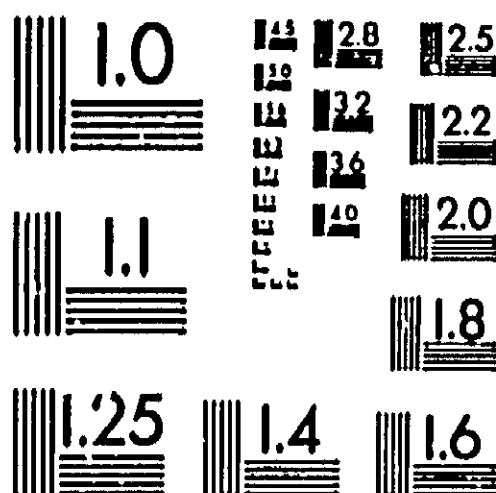


# **IMAGE EVALUATION TEST TARGET (MT-3)**



**PHOTOGRAPHIC SCIENCES CORPORATION**  
770 BASKET ROAD  
P.O. BOX 338  
WEBSTER, NEW YORK 14580  
(716) 265-1600



Woods  
11858/B

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE: B-206233**

**DATE: June 2, 1982**

**MATTER OF: Frost & Keeling Associates, Inc.**

**DIGEST:**

1. Significant variance of a bid price from the other bids and from the Government's estimate is sufficient to give a contracting officer reason to believe that the bid may have been mistaken, thereby requiring verification of the bid under Defense Acquisition Regulation § 2-406.1.
2. An agency determination regarding correction of an alleged mistake in bid will not be disturbed unless there is no reasonable basis for the determination.
3. Where examination of bidder's worksheets establishes by clear and convincing evidence that insulation cc is that should have been included in one item were mistakenly included in another, correction of the bid may be allowed under Defense Acquisition Regulation § 2-406.3(a)(3).

Frost & Keeling Associates, Inc. protests an administrative determination by the Air Force to permit correction of a mistake in the bid of the apparent low bidder under Invitation for Bids (IFB) F34650-81-B-0266. The protester contends that correction of the bid would violate the integrity of the bidding process and would be a costly move by the Government. We conclude that the decision to permit correction of the bid was proper under Defense Acquisition Regulation (DAR) § 2-406.3(a)(3) and, therefore, deny the protest.

The Air Force sought in the IFB to obtain prices for a new steam and condensate return system (item No. 1) and the insulation of 67 plating tanks (item No.2) at

Tinker Air Force Base, Oklahoma. Both items were required to be bid and the total for both items was to be entered; however, the IFB expressly reserved the Government's right to make an award for either or both items, unless a bid was qualified by specific limitation. A contract was to be awarded to only one contractor.

Eight bids were received in response to the IFB. The lowest three bids and the Government's estimate are indicated below.

<u>Bid/Estimate</u>	<u>Item 1</u>	<u>Item 2</u>	<u>Total</u>
Central Mechanical	\$115,610	\$115,270	\$230,880
Frost & Keeling Assoc.	178,083	60,900	238,983
J.C. Hester Co.	196,936	70,695	267,631
Government estimate	160,000	26,000	186,000

Because Central Mechanical's bids on both items varied so greatly both from the range of other bids received and from the Government's estimate, it was suspected that Central's bids may have been mistaken. In a telephone conversation the day after bids were opened, Central's president was advised of this suspicion. He was also advised of the total of each other bid received and of the Government's estimate. See DAR § 2-406.3(e)(1)(i), (iv); Aerospace America, Inc., Request for Reconsideration, B-181439, May 27, 1975, 75-1 CPD 313. Later that day, Central's president informed the contracting officer that his estimator had included the cost of all insulation (the 67 tanks as well as the piping insulation) in item No. 2. The piping insulation costs should have been included in item No. 1. If a contract were awarded for both items, the mistake would not have made a difference; however, the Air Force decided to contract for item No. 1 only, with the result that Central's bid for this item was mistakenly too low. Central thereafter requested that its bid for item No. 1 be adjusted to include \$48,270 for the piping insulation. Even as so adjusted, Central's bid for item No. 1 would remain the low bid.

In support of its request to correct its bid for item No. 1, Central submitted to the contracting officer a sworn statement by its president as to the source of the mistake and the original worksheets used in preparing the bid. DAR § 2-406.3(e)(1). These materials were forwarded to the Staff Judge Advocate (SJA) of the Air Force Logistics Command who

found that Central had presented clear and convincing evidence both as to the existence of a mistake and as to the bid actually intended. The SJA therefore determined that Central would be permitted to correct its bid to include an additional \$48,270 for item No. 1.

DAR § 2-406.1 requires contracting officers to examine all bids for mistakes after bid opening. Where the contracting officer has reason to believe that a mistake may have been made, he is required to call the bidder's attention to the suspected mistake and to request that the bidder verify its bid. In this case, the extent to which Central's bids varied from those of the other bidders and the Government's estimate was sufficient to give the contracting officer reason to believe that a mistake may have been made. See Brendle Sprinkler Company, Inc., B-202971, July 15, 1981, 81-2 CPD 39; H. Martin Construction Company, B-201352, April 8, 1981, 81-1 CPD 268. DAR § 2-406.1 requires further that if, when contacted, the bidder alleges a mistake, the matter is to be processed under DAR § 2-406.2 if the mistake is an "apparent clerical mistake," and under DAR § 2-406.3 for all other mistakes. Since the alleged error here is clearly not an "apparent clerical error," action to correct Central's bid was taken under DAR § 2-406.3, which allows for bid correction where it is shown by clear and convincing evidence both that a mistake was made and the intended bid price.

The scope of our review in this case is narrow. Authority to correct mistakes alleged after bid opening but prior to award has been delegated to the procuring agency; our Office will not disturb a determination by the agency in this regard unless there is no reasonable basis for the decision. See John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294. We have reviewed the record prepared in response to Central's request to correct its bid and conclude that a reasonable basis existed for the SJA's determination that both the existence of a mistake and the bid actually intended had been established by clear and convincing evidence. For example, the worksheets were prepared by computer and contain detailed elements (cost, overhead, profit) for each item of work comprising the job. From our review of the worksheets, it is apparent that the pipe insulation was carried in the bid for item two in the amount for which correction is requested, while the cost of the piping itself was contained in item one. We, therefore, conclude that the determination to correct the bid was a reasonable one.

We recognize that to allow correction of a bid after bids have been opened and prices disclosed could possibly compromise the integrity of the competitive bidding process. This potential for abuse is minimized, however, by the high standard of proof required before correction is permitted. Where regulatory procedures for bid correction are strictly followed, the Government should have the cost benefit of a corrected bid if it is still low. Brendle Sprinkler Company, Inc., supra; John Amentas Decorators, Inc., supra.

The protest is denied.

*for* *Milton J. Forolan*  
Comptroller General  
of the United States

**BLANK**

**PAGE**

15 N 15